

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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In the Matter of

Request of Progeny LMS, LLC for Waiver and  
Limited Extension of Time

DA 17-20

WT Docket No. 12-202

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CONDITIONALLY SUBMITTED  
APPLICATION FOR REVIEW, AND  
IN THE ALTERNATIVE REQUEST UNDER SECTION 1.41

To: Office of the Secretary  
Attn: the Commission

Warren Havens, and  
Polaris PNT PBC  
2649 Benvenue Ave.  
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(510) 914 0910

February 16, 2017

Conditionally Submitted  
Application for Review  
and in the Alternative Request Under Section 1.41

Petitioners Warren Havens (“Havens”) and Polaris PNT PBC (a claims assignee of Havens), submit this conditionally submitted application for review and in the alternative request under Section 1.41 for informal action (the “Application-Request”) of the above captioned DA 17-20 (the “Order”).

- I -

The Application is submitted conditional due to the lack of current clarity from the California Superior Court that controls the receivership pendent lite under Receiver Susan Uecker that includes Telesaurus Holdings GB LLC, Skybridge Spectrum Foundation and other FCC licensee companies in which Havens has interests, and due to ongoing efforts of Havens to obtain clarity as to what the existing court orders impose and do not impose as to any prior restraint upon Havens in addressing in filings and communications various matters before the FCC, including matters relating to the Order, including for purposes of the currently submitted conditional Application. I have explained this situation to Mr. Scot Stone of the Wireless Bureau earlier this week (in reference to a FCC matter other than the subject Order).<sup>1</sup>

Upon obtaining from the noted Superior Court, or any other court, or the FCC (if I seek and obtain a declaratory ruling on the noted restraint matters that may be imposed or not imposed

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<sup>1</sup> The California Court of Appeal, in the Havens case A4150411, recently issued a stay as to several decisions of the Superior Court that imposed such restraints, one of which involved Havens petitioning the FCC in another matter, but with essentially the same issues posed by Havens submitting this Application and any supplement or substitute filing. A stay is issued where there is a probability to prevail on the merits.

under FCC jurisdiction and law) a favorable clear decision on the above- noted restraint matters, then Petitions will supplement or replace this filing.

The noted potential restraints and lack of clarity impose, *at minimum*, a substantial chill upon Havens's First Amendment rights to petition and engage in speech before the FCC that Havens believes violates these rights and should be found void.

If a non-FCC authority decides that Petitioners may not address the FCC on matters of the Order then the FCC may determine if that if the FCC and the parties involved are properly subject of that decision.

Petitioners assert that the above situation presents good cause for tolling as to deadlines of pleadings and other actions in seeking review of matters of the Order. Further good cause is shown in the Request to Accept included in Petitioners Petitions for Reconsideration submitted January 18, 2017 of FCC 16-172 (including why the an improper FCC decisions, the, clearly incorrect and *ultra vires* interlocutory FCC 15M-14 Order of ALJ Richard Sippel and delays by the Commission in addressing the Havens interlocutory appeals and other challenges to that

## - II -

The following is submitted subject to the above:

Warren Havens and Polaris PNT PBC ("Havens", "Polaris", and together, "Petitioners")<sup>2</sup> hereby submit this application for review and in the alternative request under Section 1.41 (the "Application"), on a conditional basis, of the Bureau's Order, DA 17-20, that denied a certain petition to deny of renewal applications filed by Progeny (what the Order refers to as the Renewal PTD). The condition is explained below in Section 1. Based upon the resolution of the

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<sup>2</sup> Havens is filing this Petition on his behalf. This filing is also submitted by Havens for Polaris PNT PBC, a Delaware Public Benefit Corporation, controlled by Havens. Havens has assigned certain rights and assets to Polaris to enable it to pursue wireless in the public benefit and for commercial gain.

matter described in the condition regarding a California court receivership, this Application may become subject of an Order of the Receivership court.

If the FCC does not process this Application under §1.115, then Petitioners request processing under §1.41, including for a more full and complete record and determination in the public interest, especially since these matters involve or relate to FCC auction and licensing integrity, required bidder entity disclosure, ownership and control disclosures, application certifications, proper licensing application procedures, and other fundamental FCC rule and law requirements.

Contrary to the Bureau's Order that the petition to deny Progeny's renewals (the "Renewal PTD" in the Order) did not present any *prima facie* facts and that it "does not include specific facts supporting the claims of fraud and other auction rule violations, Havens' petition and its attachment Past Pleading "[3]", which contained a petition for reconsideration of the Progeny Transfer of Control Applications, re: File Nos. 0000006894 and 0000006894, dated January 11, 2008, did provide specific allegations and evidence that Progeny had violated auction rules, including *inter alia*, that the Progeny entity that holds the subject LMS licenses did not exist at the time of the LMS auction which of course is an auction rule violation and fraud, since the bidding entity was not the same one as that which ended up with the licenses. See, for example, that petition for reconsideration's Exhibit 2, including Exhibit 2 at its page 26 of 106 that contains Progeny's Certificate of Organization stating it was formed on April 16, 1999, which was after the auction occurred. The Bureau could have looked up this document or obtained a copy from the state authority to confirm that what Havens presented was accurate.

In fact, the past pleadings that contain those facts and others showing rule violations, including re: affiliates, are before the FCC and that petition for reconsideration was previously considered by the Bureau, as the Order itself notes at its footnote 173 (there is a pending appeal of that petition for reconsideration of the Progeny transfer of control applications). Thus, these

facts have already been before the Bureau, so it cannot allege that it is not aware of them or ignore them or assert that Havens was not specific enough as to them. The Commission upon review should not ignore these facts that are relevant to its most fundamental licensing rules and process.

That *prima facie* evidence shows another entity bid for and won the subject LMS licenses, and then that entity was substituted for with another entity named “Progeny” (the current Progeny) after the auction. That change in bidder required an assignment application, which was never done, and would have been disqualifying under FCC rules. There is nothing in the record to support that the FCC approved an assignment of the licenses from the auction winner company to the current Progeny when granting the Form 601, or that the FCC waived its rules to allow that to occur and without any application to apply for it. There is nothing in Progeny’s auction application, File No. 0000006894, that reflects an assignment from the auction bidder entity to the current Progeny entity, or in the FCC’s 11/15/1999 waiver grant letter which only dealt with electronic filing requirements to delete two markets from the auction application. Clearly such a change would have required a waiver of many Commission fundamental auction rules, and the Bureau did not grant any such waiver and thus it is not possible for the Bureau to have considered and acted upon those facts. Furthermore, such a change is disqualifying and it makes any license application or license grant by the Bureau *void ab initio*, regardless if the Bureau granted the auction application in error or not. Progeny also subsequently admitted to an affiliate not disclosed, but asserted that it would not cause any change, however, it had to amend its application to make that change, but did not and that should be reviewed and considered since the Renewal PTD raised facts and arguments re: undisclosed affiliates of Progeny and its controlling interests.

The Commission should also consider when deciding upon this Application the facts and arguments in the pending application for review noted in the Order’s footnote 173.

Upon review, the Commission should consider the petition to deny the renewals and its facts and arguments since the Bureau erred by not considering them and asserting that they do not show auction rule and other FCC rule violations.

The Order erred in finding that, in the public interest, core violations of auction rules established under 47 USC 309(j) by Congressional mandate should not be squarely addressed when raised by Havens with clearly relevant and sufficient facts, even if not raised in relevant time as to the auction long form. The Bureau has found that this evidence and related arguments were kept pending “without prejudice.”

#### Conclusion

For reasons given above, the Application should be granted.

Respectfully submitted,

/s/

Warren Havens, for

Warren Havens, and  
Polaris PNT PBC

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February 16, 2017

Declaration

I, Warren Havens, declare under penalty of perjury that the foregoing filing, including all attachments and exhibits, was prepared pursuant to my direction and control and that the factual statements and representations contained herein are true and correct.

*/s/ Warren Havens*  
*[Submitted Electronically.]*

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Warren Havens

February 16, 2017

Certificate of Service

I, Warren C. Havens, certify that I have, on February 16, 2017, caused to be served, by placing into the USPS mail system with first-class postage affixed unless otherwise noted below, a copy of the foregoing filing, including any exhibits or attachments, to the following:<sup>3</sup>

Progeny LMS, LLC  
2058 Crossing Gate Way  
Vienna, VA 22181  
ATTN Carson Agnew

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201 North Union St., Suite 360  
Alexandria, VA 22314  
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ATTN Bruce Olcott

Bruce Olcott  
Jones Day  
51 Louisiana Avenue  
Washington, DC 20001

/s/ *[Filed Electronically.]*

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Warren Havens

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<sup>3</sup> The mailed copy being placed into a USPS drop-box today may be after business hours and thus may not be processed and postmarked by the USPS until the next business day.